IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8724 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BABUBHAI RAGHUBHAI NAIR

Versus

AHMEDABAD MUNICIPAL TRANSPORT CORPORATION

Appearance:

1. Special Civil Application No. 8724 of 1999

MR KV GADHIA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Biren Vaishnav for the petitioner and Mr.H.S.Munshaw for the respondent. By way of this petition, the petitioner has challenged the award made by the labour court, Ahmedabad in Reference

(LCA) No. 1862 of 1990 dated 18th May, 1999 wherein the labour court has, while granting reinstatement in favour of the workman with continuity of service, has refused to grant back wages for the intervening period and has also imposed punishment of stoppage of one annual increment with cumulative effect. Learned advocate Mr. Vaishnav appearing for the petitioner has submitted that the allegations made against the petitioner have not been found to be proved before the labour court as per the observations made by the labour court in para 9 at page 33. He has also submitted that the labour court has denied entire back wages for the interim period which amounts to harsh punishment upon the petitioner. He has submitted that the labour court has clearly concluded that the punishment imposed upon the workman was harsh and unjustified and, therefore, back wages ought to have been granted by the labour court. He has also submitted that the denial of back wages is having adverse effect on the claim of gratuity because the controlling authority is also not granting the gratuity for the intervening period. In support of his submissions, he has relied upon the decision of this Court reported in 1997 (2) GLR 1129 and 1985 (1) GLR 146 and has submitted that in such a situation, the workman is entitled for some back wages for the intervening period because the refusal of back wages is harsh and unjustified.

As against that, learned advocate Mr. Munshaw appearing for the respondent has submitted that the labour court, while exercising the discretionary powers under section 11-A of the Industrial Disputes Act, 1947, granted reinstatement without back wages and such discretion has rightly been exercised by the labour court considering the past record and gravity of misconduct. He has further submitted that in doing so, the labour court has not committed any jurisdictional error and there is also no infirmity in the award made by the labour court and, therefore, this court should not exercise the discretion in favour of the workman while exercising the powers under Article 226/227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award made by the labour court concerned. The petitioner was dismissed from service on 20th June, 1990 and has challenged the order of removal before the labour court concerned. Statement of claim was filed by the petitioner before the labour court at Exh. 7 and the reply thereto was filed by the respondent at Exh. 11. Documents were produced by the respondent transport

service before the labour court vide list Exh. 12 wherein whole inquiry record alongwith the past record has been produced. The petitioner was examined at Exh. 31 and thereafter one Ashwin K. Brahmbhatt was examined and thereafter, the labour court has examined the legality, validity and propriety of the departmental inquiry and has come to the conclusion that the inquiry conducted against the petitioner by the respondent was legal and valid and the labour court has thereafter considered the written arguments submitted by the parties before it. The labour court observed that on 9th January, 1988 at about 9.00 p.m., the workman was going with his family near Jivraj Park. In the bus, checking inspector asked for ticket from the petitioner but the driver replied that he is the brother of the driver and, therefore, there was some misbehaviour with the checking staff and the penalty was asked by the checking inspector which was paid by the brother of the driver.Charge levelled against the petitioner was that he had misbehaved with the checking staff and used filthy language against the checking inspector and on the basis of that charge, he was served with the chargesheet dated 12th January, 1988 and his statement was recorded by the I.O. and thereafter the labour court has examined whether, on the basis of the misconduct which has found tobe proved, punishment of dismissal is harsh or not. That aspect has been examined by the labour court and the labour court after considering relevant provisions of the Standing Orders, come to the conclusion that the punishment of dismissal from service is harsh and unjustified looking to the gravity of misconduct and the past record of the petitioner workman and has concluded that award of reinstatement with continuity of service without back wages for the intervening period would be just and proper in exercise of the powers under section 11-A of the I.D. Act, 1947. The labour court, therefore, made an award of reinstatement with continuity of service but without back wages and has, thus, denied back wages for the intervening period and has also imposed punishment of stoppage of one annual increment with cumulative effect.

I have considered two decisions cited by Mr. Vaishnav. No doubt, both the decisions are in respect of the misbehaviour with the higher officials and use of filthy language but the facts were different. In the said two decisions, past record of the workman concerned was found to be good whereas in the case before hand, past record of the workman is not found to be good. In past, the petitioner workman has committed fifteen defaults and the past record has been taken into

consideration by the labour court while passing the award in exercise of the discretion under section 11A of the I.D. Act and was of the view that looking to the gravity of misconduct committed by the petitioner workman, denial of back wages is sufficient punishment. The labour court is entitled to impose punishment by way of denying back wages for the intervening period.

This aspect has been considered by the apex court in case of Jitendra Singh Rathor versus Shri Baidyanath Ayurved Bhavan Ltd. reported in AIR 1984 SC 976 wherein it has been held that where the tribunal while directing reinstatement withheld payment of half of the back wages keeping in view the proved misconduct of the employer, withholding of half of the back wages in the nature of penalty, in such a case, it could not be said that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty. In para 3 and 4 of the said decision, it has been observed by the apex court as under:

"3. While discretion is vested in the Tribunal under this provision and in a given case on the facts established the tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages.In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld, it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty.

4. Under S.11A of the Act, advisedly, wide discretion has been vested in the Tribunal in the matter of awarding relief according to the

> circumstances of the case. The High Court under Art. 227 of the Constitution does not enjoy such power though as a superior court, vested with the right of superintendence. The High Court is indisputably entitled to scrutinise the orders of subordinate tribunals within the well accepted limitations and, therefore, it could in an appropriate case quash the award of the tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the tribunal and substitute an award in place of toe one made by the tribunal as in the case of an appeal where it lies to it. In this case, the tribunal had directed the reinstatement, the High Court vacated the direction of reinstatement and computed compensation of rupees 15,000.00 in lieu of restoration of service. We are not impressed by the reasoning of the High Court that reinstatement was not justified when the tribunal in exercise of its wide discretion given under the law found that such relief would meet the ends of justice. The Tribunal had not recorded a finding that there was loss of confidence of the employee. The job of a librarian does not involve the necessity of enjoyment of any special confidence of the employer. At any rate, the High Court too did not record a finding to that effect. Again, there is no indication in the judgment of the High Court as to how many years of service the appellant had put in and how many years of service were still left under the Standing Orders. The salary and other service benefits which the appellant was receiving also did not enter into the consideration of the High Court while computing the compensation. We are, therefore, of the view that the High Court had no jurisdiction to interfere with the direction regarding reinstatement to service and in proceeding to substitute the direction by quantifying the compensation of Rupees 15000/- it acted without any legitimate basis. "

In view of the observations made by the apex court in case of Jitendra Singh Rathor versus Shri Baidyanath Ayurved Bhavan Ltd. reported in AIR 1984 SC 976, and also considering the award in question made by the labour court, according to my opinion, the labour court was right in exercising the discretion vested in it under section 11-A of the I.D. Act after considering the

gravity of misconduct committed by the workman and also after considering the past record of the workman concerned and in doing so, the labour court has not committed any jurisdictional error and/or procedural irregularity.

Further, this Court is having very limited jurisdiction under Article 226 and/or 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with and not otherwise.

Mr. Vaishnav has not been able to point out any infirmity in the award made by the labour court. He has also not been able to point out any jurisdictional error or procedural irregularity committed by the labour court while exercising the discretion under section 11-A of the Industrial Disputes Act, 1947. Therefore, no interference is required in exercise of the powers under Article 226/227 of the Constitution of India.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

However, it is clarified that the labour court has granted reinstatement with continuity of service without back wages for the intervening period. Thus, except back wages, the petitioner workman would be

entitled for all other consequential benefits. Therefore, the petitioner must have to be in service with continuity granted by the labour court and on that basis, he is entitled for the benefits available under the service rules of the Transport Service.

9.4.2002. (H.K. Rathod,J.)

Vyas

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